In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 1011

W. H. PAT O'BRYAN,
Petitioner,

VERSUS

STEPHEN S. CHANDLER, Chief Judge of the United States District Court for the Western District of Oklahoma,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of Honorable Edwin Langley of the District Court is not reported. It is entitled "Order" and is set out as Appendix C to the Petition. It contains the findings of the District Court, the order overruling Petitioner's Motion to vacate the order disbarring him and the order dismissing the action.

The opinion of the Court of Appeals which Petitioner seeks to have reviewed here is entitled *In the Matter Pertaining to W. H. Pat O'Bryan,* Number 9563. It is reported in 399 F.2d 916 and is set out as Appendix B to the Petition. The Petition is incorrectly entitled in this Court *O'Bryan* v. *Chandler, Chief Judge.*

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the notice of appeal was filed within the time required by law so as to vest the Court of Appeals with jurisdiction to review the Order and Judgment of the District Court.

The other questions presented by Petitioner are frivolous and do not warrant discussion.

STATUTE INVOLVED

The pertinent provisions of law are 28 U.S.C. 2107 and Federal Rules of Appellate Procedure, Rule 4.

STATEMENT

The Judgment of the Court of Appeals, review of which is sought here, was titled in that Court *In the Matter Pertaining to W. H. Pat O'Bryan,* Number 9563. Petitioner has incorrectly and improperly entitled his Petition for Writ of Certiorari in this Court as *W. H. Pat O'Bryan* v. *Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma.*

Respondent, Judge Chandler, was not a party to the action in the District Court nor in the Court of Appeals. However, since he is improperly designated by Petitioner as the Respondent and is the only person served with notice of the filing of the Petition for Writ of Certiorari, it is considered incumbent on him, in the interest of justice, to oppose the Petition.

Petitioner does not deny that no notice of appeal was given within thirty days as required by 28 U.S.C. 2107 and Federal Rules of Appellate Procedure, Rule 4. Counsel fatuously argue that such jurisdictional requirement should not apply to Petitioner.

Judge Langley, the trial judge, in his Order, Appendix C, page 2, found from an examination of the records of the court that Petitioner was disbarred in 1958 at a properly noticed hearing by order signed by all of the judges of the court, that appropriate entries were made on the various pertinent dockets and that no appeal was taken by Petitioner from this order.

Judge Langley also found that in 1959 the court denied an application of Petitioner to vacate the order of disbarment and restore his name to the roll of attorneys; that an appeal was taken from this order which was dismissed by the Court of Appeals because the Notice of Appeal was not timely filed. *O'Bryan, O'Bryan & O'Bryan* v. *Harrison, Trustee,* 274 F.2d 831 (C.A. 10, 1959).

ARGUMENT

From the foregoing it is clear that the disbarment Judgment is *res judicata* both by reason of the failure to appeal from the original Order of disbarment in 1958 and the dismissal of Petitioner's untimely appeal from the 1959 Order denying his Motion for reconsideration and vacation of the Order of disbarment.

It seems proper, under the circumstances, to also call to the attention of the Court that Petitioner requested and was granted a separate open trial before The Oklahoma

Bar Association upon the same charges and that upon the record so made the Supreme Court of Oklahoma disbarred him by Opinion reported as *State of Oklahoma ex rel. Oklahoma Bar Association* v. *O'Bryan,* 385 P.2d 876, *cert. denied* 376 U.S. 649, 11 L.Ed.2d 980, 84 S.Ct. 983. In the opinion the Supreme Court of Oklahoma stated, at page 890:

> "We conclude that the evidence in this case is sufficient to overcome the presumption that respondent is innocent and to establish to a reasonable certainty that the charge against him is true."

It thus appears from the record before this Court that not only was Petitioner's Notice of Appeal to the Court of Appeals untimely, but that the matter sought to be relitigated in the District Court was *res judicata* by final judgments of the highest Federal and State Courts.

The decision of the Court of Appeals which Petitioner sets out as Appendix A to his Petition entitled *O'Bryan* v. *Stephen S. Chandler,* in his individual capacity, Number 9563, was *improperly titled* and *erroneously entered* by that court, the error having been induced by counsel for Petitioner who misled the court as to the facts. No counsel appeared in opposition to call the improper presentation to the attention of the court.

When Judge Chandler called the error to the attention of the court and the Oklahoma Bar Association appeared *amicus curiae* and presented the true facts, the opinion was withdrawn and the court entered the judgment, Appendix B to the Petition, *properly titled* and *numbered,* dismissing the untimely appeal.

This Brief in Opposition to the Petition is filed to prevent this Court from being similarly misled by the improper designation of the case here and the confusing, burdensome, irrelevant, immaterial and scandalous matter which counsel for Petitioner have set out in the Petition in direct violation of Rule 40.

There are other excellent reasons for opposing the Petition. If the Court should be inclined to seriously consider the Petition, the matter should be called to the attention of the Oklahoma State Bar so that counsel who appeared and presented the matter in the Court of Appeals may oppose it.

However, Respondent believes that it will be clear to the Court that the decision below is correct, that there is no conflict of decisions involved and that there is no important question of Federal Law to be settled.

CONCLUSION

For the foregoing reasons, it is submitted that the Petition should be denied.

Respectfully submitted,

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February 24, 1969